

SANTA MONICA MOUNTAINS CONSERVANCY

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VIA ELECTRONIC MAIL AND U.S. POSTAL SERVICE

June 26, 2008

Rabbi Zushe Cunin
Chabad of Pacific Palisades
15207A Sunset Boulevard
Pacific Palisades, California 90272

Special Conservancy Meeting July 7, 2008

Dear Rabbi Cunin:

Chairperson Ronald P. Schafer has called a special meeting of the Santa Monica Mountains Conservancy for July 7, 2008 to hear your appeal from my decision of June 12, 2008 denying the lease extension you requested for the Palisades Jewish Early Childhood Center (PJECC) at Temescal Gateway Park.

The meeting will be held in Stewart Hall at the Temescal Canyon Conference and Retreat Center, 15601 Sunset Boulevard, Pacific Palisades. A field trip of the park will begin at 5:30 p.m. and the Conservancy will convene at 7:30 p.m. A copy of the agenda is attached.

The agenda is divided in two parts. First is consideration of a resolution granting Chabad's appeal; failing that there will be no further business and the Conservancy will adjourn.

If the appeal is granted, then three related matters will be considered.

- Project description. The Conservancy will adopt a project description that will form the basis for the initial study under the California Environmental Quality Act (CEQA). See 14 Cal. Code Regs. § 15603. You must make a formal application. This should be submitted in electronic form (MS Word for Windows 97 or above), addressed to the Conservancy, and sent to the Board Secretary at boardsec@smmc.ca.gov by noon on Wednesday, July 2, 2008. It will be posted on the Conservancy web site with other agenda related material. The application must contain:
 1. A detailed project description, including but not limited to, specific location of the proposed site; type and square footage of the buildings; area of the curtilage; number of students; number of staff; number of vehicles; hours of operation, and any special events to be undertaken in conjunction with the preschool.

2. A statement of why the lease, as described in your application, is for a purpose consistent with the Santa Monica Mountains Conservancy Act as required by Section 33206. Specifically your attention is directed to paragraph (1) of subdivision (d) of Section 33211.5, to wit: "The types of uses [of Conservancy land] and the management policies affecting those uses shall be consistent with the policies for permitted uses of lands within the state park system."
- Delegation of responsibility for preparation of environmental documents. The Conservancy cannot delegate responsibility for the ultimate contents of the environmental documentation and for certification thereof, but can have others prepare the material in the first instance. 14 Cal. Code Regs. § 15084(d)(2). The staff proposes that the Mountains Recreation and Conservation Authority (MRCA) be so delegated. There are two reasons for this: (1) The State of California won't have a budget at the start of the fiscal year and all predictions are that the budget will be substantially delayed. The Conservancy does not have the power to enter into contracts in absence of a budget. The Conservancy's staff, while competent to prepare the environmental documentation, is fully committed on other projects. Because Chabad wants to open their preschool in September, time is of the essence, and therefore an outside party must do the work. (2) The MRCA is the appropriate entity to prepare the initial environmental documentation. It has extensive experience in Temescal Canyon, indeed, is the operational entity there. The MRCA can quickly enter into contracts and has a "short list" of environmental consulting firms that have been pre-qualified.
 - Payment for preparation of environmental documentation for the PJ ECC proposal. Chabad's proposal would confer private benefit, therefore it is inappropriate for public funds to be used for CEQA compliance. The Guidelines say that the Conservancy

[M]ay charge and collect a reasonable fee from the person or entity proposing the project in order to recover the estimated costs incurred in preparing environmental documents and for procedures necessary to comply with CEQA on the project. (14 Cal. Code Regs. § 15045(a).)

The Conservancy has no fee policy because it has never been presented with a private use unambiguously requiring CEQA.

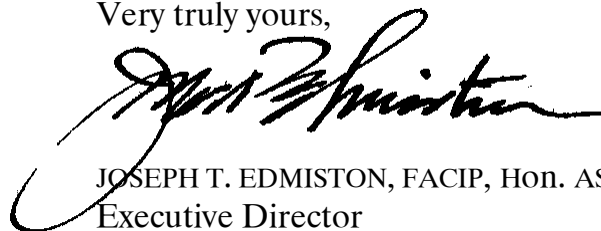
(Note: Chabad's 2007 lease was the first to involve placement of new structures outside the developed portion of Temescal Canyon; it was a close call to execute the lease without a notice of exemption or negative declaration; however, the guaranteed

temporary nature of the use was thought sufficient so that totally punctilious compliance with the most restrictive interpretation of CEQA was not necessary. The error was mine. I imprudently assumed the temporary nature of your use was vouchsafed by the language of the lease itself, *i.e.*, that it could “not be extended or renewed under any circumstances.” Obviously, if the Conservancy considers your proposal, then the truth value of that provision of the lease is *nil*. So the excuse for CEQA non-compliance can’t be used a second time around.)

The proposed policy will require Chabad to pay up front the full estimated cost of preparation of the environmental documentation and other aspects of environmental compliance (such as noticing and duplication costs) pursuant to 14 Cal. Code Regs. § 15045(a). The estimated cost will be determined one of two ways, at the election of Chabad: (a) the quickest way is for MRCA to select an appropriate firm from its “short list” of environmental consultants, ask that firm to propose, and then select on a sole-source basis. Based on the proposal, Chabad would be required to deposit the full amount of the estimated cost; (b) an alternative method is to seek proposals from a number of firms, evaluate their proposals and interview them, aiming for the most cost-effective proposer. The potential for cost savings is obvious, but likewise, there is a time penalty for this more elaborate process. The choice would be up to Chabad, so long as the ultimate selection and direction of the contractor is up to the Authority.

If you have any questions or comments about this process, please contact Laurie C. Collins, Chief Staff Counsel, at (323) 221-8900 x 133 or via e-mail at collins@smmc.ca.gov.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joe Edmiston", written over a large, stylized circular flourish.

JOSEPH T. EDMISTON, FACIP, Hon. ASLA
Executive Director

Attachment: 7-7-08 Agenda

cc: The Conservancy
The Advisory Committee
MRCA Governing Board
Terry T. Fujimoto, Deputy AG